

## UNITED STATES DISTRICT COURT

## DISTRICT OF NEVADA

JOSEPH WASHINGTON,

Plaintiff,

v.

TIMEKEEPER NDOC, *et al.*,

Defendants.

Case No. 2:24-cv-01000-GMN-DJA

## SCREENING ORDER

Plaintiff, who is incarcerated in the custody of the Nevada Department of Corrections ("NDOC"), has submitted a civil rights complaint pursuant to 42 U.S.C. § 1983, and he has filed an application to proceed *in forma pauperis*. (ECF Nos. 1-1, 1.) A decision on the application to proceed *in forma pauperis* is temporarily deferred. The Court will now screen Plaintiff's civil rights complaint under 28 U.S.C. § 1915A.

**I. SCREENING STANDARD**

Federal courts must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek monetary relief from a defendant who is immune from such relief. See 28 U.S.C. § 1915A(b)(1),(2). *Pro se* pleadings, however, must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990). To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) the violation of a right secured by the Constitution or laws of the United States, and (2) that the alleged violation was committed by a person acting under color of state law. See *West v. Atkins*, 487 U.S. 42, 48 (1988).

In addition to the screening requirements under § 1915A, pursuant to the Prison Litigation Reform Act (PLRA), a federal court must dismiss a prisoner's claim, if "the allegation of poverty is untrue," or if the action "is frivolous or malicious, fails to state a

1 claim on which relief may be granted, or seeks monetary relief against a defendant who  
2 is immune from such relief.” 28 U.S.C. § 1915(e)(2). Dismissal of a complaint for failure  
3 to state a claim upon which relief can be granted is provided for in Federal Rule of Civil  
4 Procedure 12(b)(6), and the court applies the same standard under § 1915 when  
5 reviewing the adequacy of a complaint or an amended complaint. When a court  
6 dismisses a complaint under § 1915(e), the plaintiff should be given leave to amend the  
7 complaint with directions as to curing its deficiencies, unless it is clear from the face of  
8 the complaint that the deficiencies could not be cured by amendment. See *Cato v. United*  
9 *States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

10 Review under Rule 12(b)(6) is essentially a ruling on a question of law. See  
11 *Chappel v. Lab. Corp. of America*, 232 F.3d 719, 723 (9th Cir. 2000). Dismissal for failure  
12 to state a claim is proper only if it is clear that the plaintiff cannot prove any set of facts in  
13 support of the claim that would entitle him or her to relief. See *Morley v. Walker*, 175 F.3d  
14 756, 759 (9th Cir. 1999). In making this determination, the court takes as true all  
15 allegations of material fact stated in the complaint, and the court construes them in the  
16 light most favorable to the plaintiff. See *Warshaw v. Xoma Corp.*, 74 F.3d 955, 957 (9th  
17 Cir. 1996). Allegations of a *pro se* complainant are held to less stringent standards than  
18 formal pleadings drafted by lawyers. See *Hughes v. Rowe*, 449 U.S. 5, 9 (1980). While  
19 the standard under Rule 12(b)(6) does not require detailed factual allegations, a plaintiff  
20 must provide more than mere labels and conclusions. *Bell Atlantic Corp. v. Twombly*, 550  
21 U.S. 544, 555 (2007). A formulaic recitation of the elements of a cause of action is  
22 insufficient. *Id.*

23 Additionally, a reviewing court should “begin by identifying pleadings [allegations]  
24 that, because they are no more than mere conclusions, are not entitled to the assumption  
25 of truth.” *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). “While legal conclusions can provide  
26 the framework of a complaint, they must be supported with factual allegations.” *Id.* “When  
27 there are well-pleaded factual allegations, a court should assume their veracity and then  
28 determine whether they plausibly give rise to an entitlement to relief.” *Id.* “Determining

1 whether a complaint states a plausible claim for relief . . . [is] a context-specific task that  
2 requires the reviewing court to draw on its judicial experience and common sense.” *Id.*

3 Finally, all or part of a complaint filed by a prisoner may therefore be dismissed  
4 *sua sponte* if the prisoner’s claims lack an arguable basis either in law or in fact. This  
5 includes claims based on legal conclusions that are untenable (e.g., claims against  
6 defendants who are immune from suit or claims of infringement of a legal interest which  
7 clearly does not exist), as well as claims based on fanciful factual allegations (e.g.,  
8 fantastic or delusional scenarios). See *Neitzke v. Williams*, 490 U.S. 319, 327-28 (1989);  
9 see also *McKeever v. Block*, 932 F.2d 795, 798 (9th Cir. 1991).

## 10 II. SCREENING OF COMPLAINT

11 In the complaint, Plaintiff sues multiple Defendants for events that took place while  
12 he was incarcerated at High Desert State Prison (“HDSP”). (ECF No. 1-1 at 1.) Plaintiff  
13 sues Defendants Timekeeper NDOC and Warden Bean. (*Id.* at 1-6.) Plaintiff brings one  
14 count and seeks monetary relief. (*Id.* at 2-16.)

15 In the complaint, Plaintiff alleges that the Defendants conspired to deprive him of  
16 credits toward his minimum sentence.<sup>1</sup> (*Id.* at 2.) Under NRS 209.4465, the Defendants  
17 were required to apply credits to Plaintiff’s minimum sentence, but they failed to do so.  
18 (*Id.* at 3.) This extended the time until Plaintiff was eligible for parole. (*Id.*) Based on  
19 these allegations, Plaintiff states that the Defendants violated his right to due process.  
20 (*Id.*)

21 In order to state a Fourteenth Amendment due process claim, a plaintiff must  
22 adequately allege that he was denied a specified liberty interest and that he was deprived  
23 of that liberty interest without the constitutionally required procedures. *Swarthout v.*  
24 *Cooke*, 562 U.S. 216, 219 (2011). In Nevada, state prisoners do not have a liberty interest  
25 in parole or parole eligibility. See *Moor v. Palmer*, 603 F.3d 658, 661-62 (9th Cir. 2010);  
26 *Fernandez v. Nevada*, No. 3:06-CV-00628-LRH-RAM, 2009 WL 700662, at \*10 (D. Nev.

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27 <sup>1</sup> The Court notes that Plaintiff inserted multiple exhibits into the complaint. (ECF  
28 No. 1-1 at 5-15.) In screening the complaint, the Court takes all of Plaintiff’s factual  
allegations as true, but the Court does not consider any exhibits.

1 Mar. 13, 2009). Additionally, allegations that a defendant violated state law are not  
2 sufficient to state a claim for violation of the Fourteenth Amendment's due process clause.  
3 *Swarthout*, 562 U.S. at 222 (holding that "a 'mere error of state law' is not a denial of due  
4 process"); see also *Young v. Williams*, No. 2:11-CV-01532-KJD, 2012 WL 1984968, at \*3  
5 (D. Nev. June 4, 2012) (holding that alleged error in applying good time credits to  
6 sentence was an error of state law that did not constitute a due process violation).

7 The Court finds that Plaintiff fails to state a colorable due process claim. Plaintiff  
8 alleges that the Defendants violated NRS § 209.4465(7)(b), and deprived him of an earlier  
9 parole eligibility date, by failing to award him good-time credits that he was entitled to  
10 receive under Nevada law. But Plaintiff cannot establish a liberty interest in parole or his  
11 parole eligibility date. Moreover, the failure to properly apply NRS § 209.4465(7)  
12 constitutes an error of state law and cannot be the basis of a due process claim. Because  
13 Plaintiff cannot establish the existence of a liberty interest, he cannot state a colorable  
14 due process claim. Therefore, the Court dismisses Plaintiff's due process claim, with  
15 prejudice, as amendment would be futile.

16 Because the Court has dismissed Plaintiff's only claim, the Court dismisses the  
17 complaint in its entirety. The Court has dismissed Plaintiff's due process claim with  
18 prejudice. However, in light of Plaintiff's *pro se* status, the Court will give Plaintiff an  
19 opportunity to file an amended complaint, if he believes he can state some other colorable  
20 claim. Alternatively, if having read this screening order, Plaintiff does not believe that he  
21 can state a colorable claim, he may file a motion to voluntarily dismiss this case.

### 22 **III. LEAVE TO AMEND**

23 Plaintiff is granted leave to file an amended complaint to cure the deficiencies of  
24 the complaint. If Plaintiff chooses to file an amended complaint, he is advised that an  
25 amended complaint supersedes (replaces) the original complaint, and, thus, an amended  
26 complaint must be complete in itself. See *Hal Roach Studios, Inc. v. Richard Feiner &*  
27 *Co., Inc.*, 896 F.2d 1542, 1546 (9th Cir. 1989) (holding that "[t]he fact that a party was  
28 named in the original complaint is irrelevant; an amended pleading supersedes the

original”); *see also Lacey v. Maricopa Cnty.*, 693 F.3d 896, 928 (9th Cir. 2012) (holding that for claims dismissed with prejudice, a plaintiff is not required to reallege such claims in a subsequent amended complaint to preserve them for appeal). Plaintiff’s amended complaint must contain all claims, defendants, and factual allegations that Plaintiff wishes to pursue in this lawsuit. Moreover, Plaintiff should file the amended complaint on this Court’s approved prisoner civil rights form, and it must be entitled “First Amended Complaint.”

The Court notes that if Plaintiff chooses to file an amended complaint curing the deficiencies, as outlined in this order, Plaintiff will file the amended complaint within 30 days from the date of entry of this order. If Plaintiff chooses not to file an amended complaint curing the stated deficiencies, this action will be subject to dismissal.

#### IV. CONCLUSION

For the foregoing reasons, it is ordered that a decision on Plaintiff’s application to proceed *in forma pauperis* (ECF No. 1) is deferred.

It is further ordered that the Clerk of the Court file Plaintiff’s complaint (ECF No. 1-1) and send Plaintiff a courtesy copy of the complaint.

It is further ordered that Plaintiff’s due process claim is dismissed with prejudice, as amendment would be futile.

It is further ordered that the Court grants Plaintiff leave to file an amended complaint.

It is further ordered that, if Plaintiff chooses to file an amended complaint, Plaintiff will file the amended complaint within 30 days from the date of entry of this order.

It is further ordered that the Clerk of the Court will send to Plaintiff the approved form for filing a § 1983 complaint and instructions for the same. If Plaintiff chooses to file an amended complaint, he should use the approved form and he will write the words “First Amended” above the words “Civil Rights Complaint” in the caption.

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1 It is further ordered that, if Plaintiff fails to file an amended complaint curing the  
2 deficiencies outlined in this order, this action will be subject to dismissal.

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4 DATED THIS 31 day of December 2024.

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8 Gloria M. Navarro, Judge  
9 United States District Court  
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